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No. 1022-1023

In the Supreme Court of the United States

October Term, 1946

WOODVILLE, OKLAHOMA, AND NEW WOODVILLE,
OKLAHOMA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF MANDAMUS TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH
CIRCUIT

BRIEF FOR THE DEFENDANT-IN-INTERVENOR

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WOODVILLE, OKLAHOMA, AND NEW WOODVILLE,
OKLAHOMA, PETITIONERS

v.

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*ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH
CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court wrote no opinion, but explained its views in footnotes to its findings of fact and conclusions of law (R. 38-46). The opinion of the circuit court of appeals (R. 139-145) is reported in 152 F. 2d 735.

JURISDICTION

The judgments of the circuit court of appeals were entered on January 3, 1946 (R. 145, 146).

The petition for writs of certiorari was filed on March 30, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a municipality may recover more than a nominal amount for the taking of its streets by the United States, when the entire town has been condemned, the town has been dissolved, there is no necessity for new streets, and the streets and structures thereon have no market or salvage value.
2. Whether, when the United States, after acquiring a railroad right-of-way as part of a reservoir area, compelling discontinuance of the railroad use, then condemns a fee in the underlying land, a municipality may recover more than nominal compensation for the taking of the fee, by virtue of Section 14 of the Act of April 26, 1906, 34 Stat. 137, 142, which provides that, when a railroad right-of-way on certain Indian land within a municipality shall cease to be used as such, title to the land shall vest in the municipality.

STATUTE INVOLVED

Section 14 of the Act of April 26, 1906, 34 Stat. 137, 142, so far as is here material, provides:

That the lands in the Choctaw, Chickasaw, Cherokee, Creek, and Seminole na-

tions * * * reserved from allotment because of the right of any railroad or railway company therein in the nature of an easement for right of way * * * may be acquired by the railroad or railway company * * * but if any such company shall fail to make payment within the time prescribed by the regulations or shall cease to use such land for the purpose for which it was reserved, title thereto shall thereupon vest in the owner of the legal subdivision of which the land so abandoned is a part, except lands within a municipality the title to which, upon abandonment, shall vest in such municipality.

STATEMENT

The Flood Control Act of June 22, 1936, e. 688, 49 Stat. 1570, and the Act of June 28, 1938, e. 795, 52 Stat. 1215, 1219, provided for the Denison Dam and Reservoir of the Red River Basin Project in Texas and Oklahoma. The area to be flooded included Woodville, Oklahoma, an incorporated town with an area of 160 acres and a population of about 300 (R. 39, 115, 129-134). Between June, 1941, and March 13, 1943, the United States condemned all lots in the town (R. 39, 85), excepting street easements and mineral rights (R. 13). On September 21, 1943, the nine voters then remaining in the town voted to dissolve it

(R. 110-112). Under Oklahoma law, such an election results in dissolution six months thereafter. 11 Okla. Stats. Ann., sec. ~~892~~⁷⁸³.

On January 3, 1944, the town of New Woodville, Oklahoma, was incorporated (R. 52). The School District, a separate political entity (R. 92), arranged for purchase of the site for the new town, but lots in it were sold directly to individual buyers (R. 40, 65). The population of New Woodville on April 16, 1945, was 99, of whom 51 came from old Woodville and 48 from elsewhere (R. 39, 121-122). The other residents of old Woodville, more than 250 in number (R. 129-134), moved to other places (R. 39, 76). Of about 100 property owners in old Woodville (R. 129-134), only three bought property in New Woodville and moved there (R. 39, 76, 94). Fifteen or twenty houses and a few other buildings, constituting all but one or two of the buildings in New Woodville, were moved there from old Woodville (R. 39-40, 61, 90). Those houses were moved by people who bought them for that purpose and not by Woodville landowners (R. 89-90). On February 12, 1944, at a meeting and election held for that purpose, the voters of Woodville voted to assign all its property to New Woodville, and the town trustees made such assignment by resolution of February 23, 1944 (R. 23-24, 112-113).

The town of Woodville was crossed by the line of the St. Louis-San Francisco Railway, which occupied a 200-foot right-of-way (R. 115) granted to its predecessor under Section 13 of the Act of February 28, 1902, c. 134, 32 Stat. 43, 47. By agreement with the company, the United States provided a relocated line outside of the reservoir area, and, in return, the company released to the United States all of its interest in the old right-of-way (R. 45). Service on the old line was discontinued on November 15, 1943, and removal of tracks and equipment was completed by March 1, 1944 (R. 45, 62). It was stipulated that the full fee value of the strip of land from which the railroad was so removed was \$300 (R. 45, 85).

On January 29, 1945, the United States filed the present petition to condemn the street and alley easements claimed by the town of Woodville, and the fee title of the strip formerly occupied by the railroad, excepting mineral rights (R. 2-12). On February 1, 1945, a declaration of taking was filed and judgment entered thereon, estimated compensation totaling \$350 being deposited (R. 12-18). On March 15, 1945, the towns of Woodville and New Woodville filed a joint answer, admitting the right of the United States to condemn, enumerating the street improvements that existed in Woodville, asserting that Woodville had fee title to the railroad strip under Section 14 of the Act of April 26, 1906, setting up

the assignment of Woodville's rights to New Woodville, and praying judgment for the fair value of the property condemned (R. 18-24).

Jury trial having been waived, the case was tried by the court (R. 38) which on May 7, 1945, entered findings of fact, conclusions of law and judgment (R. 38-48). The court found that "the wells, sidewalks, street crossings, culverts, improved and unimproved streets * * * had no market or salvage value in place after the town ceased to be inhabited" (R. 40) and that "the town of New Woodville, with its streets and ways, was not a relocation or substitution of Woodville, or the streets and ways thereof", there having been "no effort by Woodville, in its corporate capacity, to relocate the town or to secure a new townsite" (R. 41). Concluding that Woodville had "no duty to substitute other streets and alleys" (R. 43), it awarded to New Woodville, as assignee of Woodville, one dollar for the streets and alleys and \$300, the stipulated fee value, for Woodville's interest in the railroad strip (R. 38-48). Woodville and New Woodville appealed as to the streets (R. 48) and the United States appealed as to the railroad strip (R. 107). On January 3, 1946, the appellate court entered its judgments affirming the judgment of the district court as to the streets and reversing as to the railroad strip and directing entry of judgment for one dollar as to the latter (R. 145-146).

ARGUMENT

1. The decisions of the federal courts have been uniform in holding that the liability to a municipality for the taking of street easements is not to be measured, as petitioners seek to have done (Pet. 6), by reference to the cost of reproduction of the streets and street improvements, but solely by the cost of providing whatever new streets may be necessary to serve people who were formerly served by the streets taken.¹

The principle upon which these decisions rest is clear. Roads and streets have no market value. Their only purpose is to give access to abutting land, and the value resulting from their construction attaches not to the streets themselves but to the land that they make accessible. To the town that holds a street easement for the public benefit, operation of the street is a liability, involving ex-

¹ *United States v. Des Moines County*, 148 F. 2d 448 (C. C. A. 8), certiorari denied, No. 333, this Term; *Jefferson County, etc. v. Tennessee Valley Authority*, 146 F. 2d 564 (C. C. A. 6), certiorari denied, 324 U. S. 871, rehearing denied, 324 U. S. 891; *Mayor and City Council of Baltimore v. United States*, 147 F. 2d 786 (C. C. A. 4); *United States v. Wheeler Township*, 66 F. 2d 977 (C. C. A. 8); *Town of Bedford v. United States*, 23 F. 2d 453 (C. C. A. 1); *United States v. Town of Nahant*, 153 Fed. 520 (C. C. A. 1); *Town of Nahant v. United States*, 136 Fed. 273 (C. C. A. 1); *United States v. Prince William County*, 9 F. Supp. 219 (E. D. Va.), affirmed, 79 F. 2d 1007 (C. C. A. 4), certiorari denied, 297 U. S. 714; *United States v. Alderson*, 53 F. Supp. 528 (S. D. W. Va.); cf. *United States v. Certain Parcels of Land*, 45 F. Supp. 899 (E. D. Wash.).

penditures for maintenance and bringing no return. The only value that an existing street has to a town is that it exonerates the town, *pro tanto*, from whatever obligation it has to provide such streets. Therefore, the loss that a town suffers when a street is taken from it lies in the obligation to which it is thereby resubjected of providing a street to meet the same need. The cost of providing such a substitute may be more or less than the reproduction cost of the street or road taken. If more, the town would not be made whole by payment of only the reproduction cost of the street taken; if less, payment of the reproduction cost would more than make good the only loss the town suffers, giving it an unwarranted windfall.

When condemnation of a town's streets does not make it necessary for the town to provide substitutes, the town suffers no pecuniary loss from the taking, and is entitled only to nominal compensation.² In the present case, the United States condemned and flooded all the land within the limits of the Town of Woodville (R. 39). No land remained for which the town needed to pro-

² *Mayor and City Council of Baltimore v. United States*, 147 F. 2d 786, 790 (C. C. A. 4); *United States v. Alderson*, 53 F. Supp. 528, 531 (S. D. W. Va.); *United States v. Prince William County*, 9 F. Supp. 219, 221 (E. D. Va.), affirmed, 79 F. 2d 1007 (C. C. A. 4), certiorari denied, 297 U. S. 714; cf. *United States v. Certain Parcels of Land*, 45 F. Supp. 899, 900, 902 (E. D. Wash.).

vide new means of access (R. 43). Thus, the condemnation of the town's streets subjected petitioners to no expense. The street easements and street improvements were not salable and had no market or salvage value (R. 40). The taking of them deprived the town of nothing from which it could have realized income. Since condemnation of the streets has neither increased the town's expenses nor decreased its actual or potential income, the town has suffered only nominal loss and is entitled only to the nominal compensation which it has received.

Of course, the United States cannot take useful properties such as these were without making substantial payment. But it is not to the town that the payment should be made. Streets are merely a means of access; their value is realized in the increased value of the land that they make accessible. When the United States condemned the private land abutting on these streets it took the property in which the value of the streets was reflected, and the compensation which it paid included that value. If the former owners of that land desire to establish themselves on other similar property, their award will enable them either to buy land of equal value on existing streets, or to buy unimproved land and pay street assessments to provide streets; in either case they will be restored to their former condition, and in neither case will any municipality have to pro-

vide streets for them at its own expense. This would have been true whether or not the old town of Woodville had relocated itself. The finding that New Woodville is not a relocation of Woodville is significant only because the fact that Woodville has ceased to exist makes it more obvious that Woodville will not be obliged by this condemnation to provide other streets in place of those condemned.³

Petitioners attempt to distinguish the cases cited by the United States on the ground that they involved takings of only part of a town's streets, whereas here the entire street system is taken. That difference offers no valid basis for distinction. In none of the cases was it suggested that the town had received benefits which should be set off against its damages and that it was for this reason that only nominal damages were awarded. In all of the cases, the town's damages were measured by the increased burden cast on it by the condemnation, or nominal damages were awarded if there was no such increase. There is no conflict among the cases, and the rule which they applied is precisely that which was followed by the district court and circuit court of appeals in the present case.

³ Insofar as these streets served more than a local purpose, so that substitute roads are necessary to take care of the same through traffic, the United States has compensated the state and county by providing such substitutes (R. 64, 103). The Town of Woodville had no concern with that problem.

2. Petitioner's claim (Pet. 20-23) that when the United States agreed to relocate the railroad line running through Woodville in return for the railroad's release of its interest in the right-of-way and its abandonment thereof, the fee title to the land underlying the right-of-way vested in the Town of Woodville under the Act of 1906, *supra*, p. 3, and that the town became entitled to receive the fee value of the land when the present petition was subsequently filed. The district court followed that view and awarded \$300, the stipulated fee value of the strip of land (R. 45, 47, 85). The circuit court of appeals reversed that holding, directing entry of judgment for one dollar for the interest of the Town of Woodville in this land (R. 146).

The court below stated (R. 143) that it was unnecessary to determine whether the interest of the railroad in its right-of-way had been a determinable fee or a fee subject to a condition subsequent. If the latter, the court said, there was no forfeiture because performance of the condition was made impossible by operation of law, citing *Doe dem. Marquis of Anglesea v. Church Wardens of Rugeley*, 6 Q. B. 107, and *Scovill v. McMahon*, 62 Conn. 378, 26 Atl. 479. In any event, the court held, all the steps necessary to effectuate the present project must be viewed as one proceeding. Hence, the interest taken from the town must be considered as that which it had before the project

was begun, *i. e.*, a mere expectancy with only nominal value.

In holding that compensation must be determined as if all the steps in this project were a single proceeding, the circuit court of appeals was merely applying the principle stated by this court in *United States v. Miller*, 317 U. S. 369. There it was held that, when land not taken at the beginning of the project was nevertheless within its probable scope from the outset, the order in which various properties were acquired should not be allowed to affect the amount of compensation allowed for them and the owner could not receive compensation for such value as the presence of the project had added to the land before it was actually taken. Here, it was from the outset not only probable but certain that this land would be within the reservoir area of the project. It was for that very reason that arrangements for the removal of the railroad were made by the United States. It would be manifestly unjust to hold that, because it removed the railroad before acquiring the town's interest, the United States must pay greater compensation than if it had proceeded in the opposite order. As a practical matter, the right-of-way strip belonged to the railroad, which has been fully compensated. If the United States were now required to pay the full fee value of the land to the town, it would be paying twice for the same land. The value which

the town now claims could never have been enjoyed by it. The railroad would have remained in possession, had not the project required that possession be taken by the United States. Having lost nothing of which it could ever have had beneficial enjoyment, the town is not entitled to more than nominal compensation.

CONCLUSION

The decisions of the circuit court of appeals are in accordance with the principles of law established by this Court and by other federal courts. There is no conflict of decisions. It is therefore respectfully submitted that the petitions should be denied.

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APRIL 1946.